IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.599 OF 1991

The State of Maharashtra
(at the instance of the Special Land
Acquisition officer, Metro Centre No.5,
Panvel, District : Raigad) .. Appellant

Versus

Shri Pundlik Narayan Keni,
Adult, Occupation : Agriculture,
R/o. Pethali, Taluka Panvel,
District : Raigad. .. Respondent
(Orig. claimant)

WITH

CROSS OBJECTION STAMP NO.31389 OF 1991

The State of Maharashtra
(at the instance of the Special Land
Acquisition officer, Metro Centre No.5,
Panvel, District : Raigad) .. Appellant

Versus

Shri Pundlik Narayan Keni,
Adult, Occupation : Agriculture,
R/o. Pethali, Taluka Panvel,
District : Raigad. .. Respondent

Mr.S.N. Gawade, AGP for the State
Shri Rajesh Datar learned Advocate for the Respondent

CORAM : S.R. SATHE,J.
DATED : 14/08/2007

ORAL JUDGEMENT :-

1. This appeal and the cross-objections arise from the judgement and order passed by the Court of 3rd Additional District Judge, Raigad-Alibag in Land Acquisition Reference No.285/87 whereby he enhanced the

market value of the lands under reference to Rs.12/- per sq.meter and granted solatium and compensation as per Sections 23(1)(a) and 23(2) of the Lands Acquisition Act (hereafter called as the said Act).

2. The brief facts giving rise to this appeal and cross objections are as under :-

The Special Land Acquisition Officer hereafter referred to as SLAO, Metro Centre No.5 New Panvel acquired claimant's lands bearing Survey Nos.172/2/4, 172/3, 192/3, 143/3 admeasuring total 9490 sq.meters situated at village Taloja Pachnan, Taluka Panvel for New Bombay Project and notification under section 4 of the said Act came to be issued on 03/02/1970. The necessary publication in the gazette was published on 07/09/1990. The SLAO passed award on 15/08/1986 and awarded price of the acquired lands of the claimants at the rate of Rs.3/- and 2/- per sq.meter. The claimant had in fact claimed compensation at the rate of Rs.15/- per sq.meter. Being aggrieved by the meagre amount of compensation granted to him, the claimant filed reference under section-18 of the said Act and alleged that the land is situated near from the Bombay-Pune highway. Panvel-Diva Railway line passes near from the suit land and Navade Industrial Estate is situated near

from the village Taloje. According to him, facilities of electricity and water were available near from the land in question. Besides this, the land is of plain level and has NA potentiality. Considering the market price of the lands in that locality the amount awarded by the SLAO was grossly inadequate. He, therefore, initially claimed compensation at the rate of Rs.15/- per sq.meter and subsequently, amended the reference and claimed amount at the rate of Rs.25/- per sq.meter.

3. The SLAO filed his Written Statement at Exh-6 and opposed the reference. He contended that after taking into consideration level, situation and location of the lands in question and considering the sale instances of the lands in that locality, he determined the market price. According to him, the price determined by him was reasonable. He, therefore, prayed for the dismissal of the reference.

4. On these pleadings, learned Additional District Judge, Raigad framed issues at Exh-7. In order to prove his case, the claimant examined his land valuer Mr.J.N. Kulkarni at Exh-17 and produced his report at Exh-18 and map drawn by valuer at Exh-19. The claimant examined himself at Exh-20. As against this, the SLAO did not adduce any oral evidence.

5. After considering the evidence adduced before him, the learned A.D.J. found that lands in question had NA potentiality. So, after considering all aspects, learned A.D.J. came to the conclusion that the price awarded by the SLAO was grossly inadequate. He, therefore, enhanced the price at Rs.12/- per sq.meter.

6. Being aggrieved by the above mentioned order the State of Maharashtra has filed the present appeal by contending that the price awarded by the learned A.D.J. is exorbitant. As against this, the claimant filed the cross-objection for enhancement of the price granted by learned A.D.J. The claimant has claimed the price at the rate of Rs.25/- in his cross-objection.

7. In this appeal before me, the learned AGP submitted that the land in question is a agricultural

land. No electricity and water facilities are available to the said land nor the same is within municipal limits and as such, the market value determined by the learned A.D.J. is unreasonable and it be reduced. As against this, Shri Rajesh Datar learned Advocate for the claimant submitted that the land is situated near from the Bombay-Pune National Highway and very near from Taloja Gaothan. Besides Taloja Railway Station is also near from the lands in question. According to him, in respect of other lands situated at Taloja in that locality Division Bench of this Court has awarded compensation on the basis of the distance of the land from national highway. So, in the instant case, the compensation be granted on the basis of the said Division Bench Judgement and accordingly, market price of the lands in question be fixed at the rate of Rs.25/- per sq.meter.

8. While considering the question as to whether the compensation awarded is correct or not and what should be the correct compensation one has to take into consideration provisions of Section-23 and 24 of the said Act which lay down factors to be considered in determining compensation and factors which are required to be neglected in determining compensation,

respectively. The most crucial question that always falls for consideration in such case is what is the market value of the acquired land. It must be determined by reference to the price which a willing seller might reasonably accept from a willing purchaser. It is also well settled that such consideration must be confined to the date of notification under section 4(1) of the said Act. In a case reported in **AIR 1980 SUPREME COURT 1870 ADUSUMILLI GOPALKRISHNA V/S. SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION)**. The Apex Court has observed :-

> *" On the Assessment of the compensation payable for land acquired, relevant factors must be taken into consideration, including nature of the land, its present use and its precise location in relation to adjoining land, the use to which the neighbouring land has been put and the impact of such use on the acquired lands and so on."*

9. It is also well settled that the recognized method for determining the correct market value is to find out comparable instances of sale. Even while doing so only genuine instances have to be taken into account. Besides this, it is necessary to see and consider the said instances of sale keeping in mind the

proximity of time, proximity of situation and plus minus factors of the comparable instances of sale and the plus-minus factors of the land in question.

10. Keeping in mind the above principles, let's examine the facts, circumstances and the evidence adduced by the parties in this case. It is not in dispute that the lands under reference are situated at Village Taloja and the same have been acquired for the New Bombay Project. In order to point out the peculiarities of the land in question, the claimant is mainly relying on his own deposition (Exh-20) and the evidence of the land valuer Mr.J.N. Kulkarni at Exh-70. The valuer has submitted his report at Exh-18 alongwith the map. From the evidence on behalf of the claimant, it is very that the lands in question are situated to the west of Pune-Bombay National Highway and to the west of Central Railway Line. Taloja Railway Station is only at a distance of 480 meters from the lands in question and Bombay National Highway No.4 is only at a distance of 480 meters. Taloja Gaothan is at a distance of 800 meters from lands under reference. The MIDC Industrial area, Taloja is at a distance of 2080 meters. From the above mentioned topography it does appear that the land is situated near from the

important places. Though, water and electric supply are not directly available to the land, the same is available in the MIDC Industrial Estate. It is in fact not in dispute that the land in question has NA potentiality for the commercial, industrial and residential purposes. The land valuer has stated that the lands in question are plain. Though, it appears that the lands are at low level, the same are plain and it would not require filling.

11. From the report of the valuer it is seen that the valuer had taken into consideration the sale instances of the lands in that locality. It was noticed that in one sale transaction dated 31/05/1961 the land situated near from the lands under reference was sold at the rate of Rs.11.85/- per sq.meter. The area of the said land was only 506 sq.meter. The valuer also took into consideration the various awards passed by the Courts in respect of the other lands in that locality wherein the Court had even awarded compensation at the rate of Rs.15/- per sq.m. Relying on this evidence, Shri Datar, learned Advocate for the claimant submitted that the land in question be valued at the rate of Rs.25 per sq.meter and also pointed out that in respect of the land situated at Panvel and Kamothe Division

Bench of this Court (CORAM : PURANIK AND MOHARIR, JJ.) in FA-754-86 had determined the market price of the land after taking into consideration the distance from the national highway, within the range of Rs.18 to 20/- per sq.meter. He has also drawn my attention to the other Division Bench Judgement of this Court (CORAM : F.I.REBELLO AND S.R.SATHE,JJ.) in FA-757-2003 wherein, in respect of the lands situated at Panvel and Taloja, Division Bench has fixed market value of the lands in 3 categories after taking into consideration the distance between the lands under reference and highway. In that judgement, where the land is situated within 750 meters from the highway, after deduction, the market value of the land is fixed at Rs.25/-. In the instant case, the land is only at a distance of 480 meters from the Bombay-Pune highway. So, the question arises whether the market price of the land under reference can be determined on that basis. While considering this aspect the learned AGP Shri Gawade submitted that in the instant case the claimant while giving reply to notice under section 9(3)(4) of the Land Acquisition Act had claimed compensation at the rate of Rs.15/- per sq.meter and as such, he can not be awarded rate more than the same. For this proposition, he has placed reliance on Division Bench Judgement of this Court in

FA-430-93 wherein this Court (CORAM : R.M.S. KHANDEPARKAR AND V.M. KANADE,JJ.) has observed that the claimant is not entitled to claim enhancement of compensation over and above the amount claimed by him in answer to the notice under section 9 of the Land Acquisition Act in relation to the Land Acquisition Proceedings initiated prior to 24/09/1984 in view of the unamended Section-25 of the said Act. From the perusal of the said judgement, it is clear that after considering the provisions of unamended section-25 as well as provisions of Section-11(a) of the Land Acquisition Act, the said Court has observed that in case of proceedings commenced prior to 24/09/1984 the claimant can not ask for enhanced compensation than the compensation claimed by him in his reply to notice under section-9 of the said Act. In view of this judgement, Shri Datar also fairly conceded that the amount of market value that can be fixed in the instant case would be Rs.15/- per sq.meter. So, taking into consideration the fact that the acquisition proceedings in the instant case have been initiated prior to 24/09/1984, the market value has to be fixed at Rs.15/- per sq.meter only.

12. In this view of the matter, there is no

substance in the appeal filed by the State of Maharashtra. Hence, I pass the following order :-

O R D E R

1. FA-599-1991 stands dismissed.

2. Cross Objection Stamp No.31389 of 1991 are partly allowed.

3. The market value of the Claimant's land adm.9490 is enhanced to Rs.15/- per sq.meter.

4. The opponent to pay solatium at the rate of 30% on the above mentioned amount as per section-23(2) of the Land Acquisition Act.

5. The opponent to pay the claimants amount at the rate of 12% per annum under section-23(1)(a) of the Land Acquisition Act.

6. The opponent to pay the claimants interest on the above mentioned amounts i.e. (the market value of the land + solatium amount + compensation amount at the rate of 12% p.a.) at the rate of 9% p.a. for the first year and for the remaining period till the realization of the entire amount at the rate of 15% p.a.

Under the circumstances of the case parties to bear their own costs.

(S.R. SATHE,J.)